

§ 261.60

45 CFR Ch. II (10–1–08 Edition)

had reasonable cause or it achieves compliance under a corrective compliance plan pursuant to §§ 262.5 and 262.6 of this chapter.

(b) We will impose the maximum penalty if:

(1) The State does not have a state-wide process in place to inform parents about the exception to the work requirement and enable them to demonstrate that they have been unable to obtain child care; or

(2) There is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of this requirement.

(c) We may impose a reduced penalty if the State demonstrates that the violations were isolated or that they affected a minimal number of families.

Subpart F—How Do We Ensure the Accuracy of Work Participation Information?

SOURCE: 73 FR 6826, Feb. 5, 2008, unless otherwise noted.

§ 261.60 What hours of participation may a State report for a work-eligible individual?

(a) A State must report the actual hours that an individual participates in an activity, subject to the qualifications in paragraphs (b) and (c) of this section and § 261.61(c). It is not sufficient to report the hours an individual is scheduled to participate in an activity.

(b) For the purposes of calculating the work participation rates for a month, actual hours may include the hours for which an individual was paid, including paid holidays and sick leave. For participation in unpaid work activities, it may include excused absences for hours missed due to a maximum of 10 holidays in the preceding 12-month period and up to 80 hours of additional excused absences in the preceding 12-month period, no more than 16 of which may occur in a month, for each work-eligible individual. Each State must designate the days that it wishes to count as holidays for those in unpaid activities in its Work Verification Plan. It may designate no more than 10 such days. In order to

count an excused absence as actual hours of participation, the individual must have been scheduled to participate in a countable work activity for the period of the absence that the State reports as participation. A State must describe its excused absence policies and definitions as part of its Work Verification Plan, specified at § 261.62.

(c) For unsubsidized employment, subsidized employment, and OJT, a State may report projected actual hours of employment participation for up to six months based on current, documented actual hours of work. Any time a State receives information that the client's actual hours of work have changed, or no later than the end of any six-month period, the State must re-verify the client's current actual average hours of work, and may report these projected actual hours of participation for another six-month period.

(d) A State may not count more hours toward the participation rate for a self-employed individual than the number derived by dividing the individual's self-employment income (gross income less business expenses) by the Federal minimum wage. A State may propose an alternative method of determining self-employment hours as part of its Work Verification Plan.

(e) A State may count supervised homework time and up to one hour of unsupervised homework time for each hour of class time. Total homework time counted for participation cannot exceed the hours required or advised by a particular educational program.

§ 261.61 How must a State document a work-eligible individual's hours of participation?

(a) A State must support each individual's hours of participation through documentation in the case file. In accordance with § 261.62, a State must describe in its Work Verification Plan the documentation it uses to verify hours of participation in each activity.

(b) For an employed individual, the documentation may consist of, but is not limited to pay stubs, employer reports, or time and attendance records substantiating hours of participation. A State may presume that an employed individual participated for the

total number of hours for which that individual was paid.

(c) The State must document all hours of participation in an activity; however, if a State is reporting projected hours of actual employment in accordance with § 261.60(c), it need only document the hours on which it bases the projection.

(d) For an individual who is self-employed, the documentation must comport with standards set forth in the State's approved Work Verification Plan. Self-reporting by a participant without additional verification is not sufficient documentation.

(e) For an individual who is not employed, the documentation for substantiating hours of participation may consist of, but is not limited to, time sheets, service provider attendance records, or school attendance records. For homework time, the State must also document the homework or study expectations of the educational program.

§ 261.62 What must a State do to verify the accuracy of its work participation information?

(a) To ensure accuracy in the reporting of work activities by work-eligible individuals on the TANF Data Report and, if applicable, the SSP-MOE Data Report, each State must:

(1) Establish and employ procedures for determining whether its work activities may count for participation rate purposes;

(2) Establish and employ procedures for determining how to count and verify reported hours of work;

(3) Establish and employ procedures for identifying who is a work-eligible individual;

(4) Establish and employ internal controls to ensure compliance with the procedures; and

(5) Submit to the Secretary for approval the State's Work Verification Plan in accordance with paragraph (b) of this section.

(b) A State's Work Verification Plan must include the following:

(1) For each countable work activity:

(i) A description demonstrating how the activity meets the relevant definition at § 261.2;

(ii) A description of how the State determines the number of countable hours of participation; and

(iii) A description of the documentation it uses to monitor participation and ensure that the actual hours of participation are reported;

(2) A description of the State's procedures for identifying all work-eligible individuals, as defined at § 261.2;

(3) A description of how the State ensures that, for each work-eligible individual, it:

(i) Accurately inputs data into the State's automated data processing system;

(ii) Properly tracks the hours through the automated data processing system; and

(iii) Accurately reports the hours to the Department;

(4) A description of the procedures for ensuring it does not transmit to the Department a work-eligible individual's hours of participation in an activity that does not meet a Federal definition of a countable work activity; and

(5) A description of the internal controls that the State has implemented to ensure a consistent measurement of the work participation rates, including the quality assurance processes and sampling specifications it uses to monitor adherence to the established work verification procedures by State staff, local staff, and contractors.

(c) We will review a State's Work Verification Plan for completeness and approve it if we believe that it will result in accurate reporting of work participation information.

§ 261.63 When is a State's Work Verification Plan due?

(a) Each State must submit its interim Work Verification Plan for validating work activities reported in the TANF Data Report and, if applicable, the SSP-MOE Data Report no later than September 30, 2006.

(b) If HHS requires changes, a State must submit them within 60 days of receipt of our notice and include all necessary changes as part of a final approved Work Verification Plan no later than September 30, 2007.

(c) If a State modifies its verification procedures for TANF or SSP-MOE work activities or its internal controls